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OF BOARD OF COUNTY COMMISSIONERS
OF MARCH 18, 2008

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March 18, 2008

**REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER COUNTY**

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Tuesday, March 18, 2008. Present were Chairman Sandra L. Bowden, Vice Chairman Wesley S. Davis, and Commissioners Joseph E. Flescher, Peter D. O'Bryan and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

Chairman Bowden called the meeting to order at 9:00 a.m.

2. INVOCATION

Teddy Floyd, IRCSSO Crime Prevention Unit, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA / EMERGENCY ITEMS

1. Delete Item 12.C

ON MOTION by Vice Chairman Davis, SECONDED
by Commissioner O'Bryan, the Board unanimously
approved the above change to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS

**A. PRESENTATION OF PROCLAMATION DESIGNATING MARCH 30TH -
APRIL 5TH AS BOYS & GIRLS CLUBS WEEK**

Chairman Bowden read and presented the Proclamation to Ronnie Hewett of the Boys and Girls Clubs who thanked the Board for the Proclamation and introduced Roger Stein, "County Youth of the Year."

**B. PRESENTATION ON BRIDGEVINE, INC. AND ECONOMIC
DEVELOPMENT IN INDIAN RIVER COUNTY BY MR. VINNY
OLMSTEAD, CEO OF BRIDGEVINE, INC.**

Commissioner O'Bryan disclosed that as the Economic Development Liaison, he had asked Mr. Olmstead to come and tells us about his business.

Mr. Vinny Olmstead, through a PowerPoint presentation, gave a brief history of his Bridgevine Corporation and the services offered by the company. Such services include high speed internet, phone, television, wireless, entertainment, and others. Through those shopping

engines they sought to provide a forum that brings together consumers with marketers and advertisers. He was happy to provide the services and to work with the community. He thereafter responded to questions from Vice Chairman Davis regarding any major obstacles that could hinder his business projections/proposals for this area.

6. APPROVAL OF MINUTES - NONE

7. CONSENT AGENDA

7.A. APPROVAL OF WARRANTS – FEBRUARY 29, TO MARCH 06, 2008

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of February 29, 2008 to March 6, 2008, as requested in the memorandum dated March 6, 2008.

7.B. 2008 ELECTION OF METROPOLITAN PLANNING ORGANIZATION (MPO) CHAIRMAN AND VICE CHAIRMAN

The Board noted the re-election of Commissioner Peter O’Bryan as Chairman and the election of School Board member Debbie MacKay as Vice Chairman of the MPO for the year 2008.

**7.C. 2008 ELECTION OF PARKS AND RECREATION COMMITTEE (PRC)
CHAIRMAN AND VICE CHAIRMAN**

The Board noted the election of Mr. Thomas Johnson III, as Chairman, and Mr. Ken Daige, as Vice Chairman, of the Indian River County Parks and Recreation Committee for the year 2008.

7.D. APPOINTMENT TO THE ECONOMIC DEVELOPMENT COUNCIL (EDC)

The Board noted the appointment of Mayor Thomas Cadden of the Town of Indian River Shores, as its representative to the Economic Development Council. His term will expire in 2010.

**7.E. OUT OF COUNTY TRAVEL TO ATTEND THE FLORIDA ASSOCIATION
OF COUNTIES 2008 ANNUAL CONFERENCE & EXPOSITION IN
MIAMI, FLORIDA**

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved out-of-County travel for Commissioners and staff to attend the Florida Association of Counties 2008 Annual Conference & Exposition in Miami, from Tuesday, June 24, 2008 to Friday June 27, 2008, as requested in the memorandum dated March 10, 2007~~8~~.

7.F. APPROVAL OF ANNUAL FINANCIAL REPORT BY COUNTY COMMISSIONERS

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved and authorized the Chairman to sign the County's Annual Local Government Financial Report for the fiscal year 2006-2007, as recommended in the memorandum dated March 7, 2008.

ANNUAL FINANCIAL REPORT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.G. MISCELLANEOUS BUDGET AMENDMENT 008

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved **Resolution 2008-035** amending the fiscal year 2007-2008 budget.

7.H. WORK ORDER No. 1 (ENGINEERING / SURVEYING), CREECH ENGINEERS, INC., INDIAN RIVER COUNTY HORIZONTAL CONTROL NETWORK (IRCHCN), 2007-2008 GEODETIC (GPS) RE-DENSIFICATION PROJECT ADDITIONAL SERVICES

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved Work Order No. 1, authorizing the project as outlined in the Scope of Services, and authorized the

Chairman to execute said Work Order with Creech Engineering, Inc., as recommended in the memorandum dated March 5, 2008.

WORK ORDER ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.I. WORK ORDER NO. 3 (ENGINEERING/SURVEYING), MASTELLER, MOLER REED AND TAYLOR, INC., VERO LAKE ESTATES – 108TH AVE, 106TH AVE, AND 94TH STREET, RIGHT OF WAY STAKING, TOPOGRAPHIC SURVEY

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved Work Order No. 3, authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute said Work Order with Masteller, Moler, Reed & Taylor, Inc., as recommended in the memorandum dated March 10, 2008.

WORK ORDER ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.J. WORK ORDER NO. 8 (ENGINEERING/SURVEYING), CARTER ASSOCIATES, INC., PROPOSED OSLO ROAD AND BOAT RAMP FACILITY DESIGN AND PERMITTING PROJECT

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved Work Order No. 8, authorizing the project as

outlined in the Scope of Services, and authorized the Chairman to execute said Work Order with Carter Associates, Inc., as recommended in the memorandum dated March 11, 2008.

WORK ORDER ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.K. F.D.O.T. JOINT PARTICIPATION AGREEMENT (JPA) AMENDMENT NUMBER ONE AND RESOLUTION AUTHORIZING THE CHAIRMAN'S SIGNATURE, ANU-30 (FM NUMBER 414794-1-58-01, VARIOUS ROADWAY IMPROVEMENTS)

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved Amendment Number One to the Joint Participation Agreement (JPA) with the Florida Department of Transportation for a sidewalk gap program for State roadways, as recommended in the memorandum dated March 12, 2008.

The Board also approved **Resolution 2008-036** authorizing the execution of a Joint Participation Agreement Amendment Number One for various roadway improvements in Indian River County.

AGREEMENT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.A. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES

**A. ROY RAYMOND, INDIAN RIVER COUNTY SHERIFF:
BUDGET AMENDMENT**

Harry Hall, Comptroller of the Sheriff's Department, presented his Department's request for permission to move funds between budgetary categories, as they have done in the past. He responded to questions from Commissioner O'Bryan regarding the dollar amount to be moved, and from where the funds would come.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Vice Chairman Davis, for approval of the Sheriff's request.

Under discussion, Commissioner Wheeler voiced his objection as he has done every year the Sheriff makes this request. He read and discussed a section of State Statute Chapter 129.06 regarding appropriation of funds that should not be changed. He wanted to see the Sheriff handle his budget the same as other departments. He thought we should get estimates on what the Sheriff thinks he is going to spend and where he would spend it. He requested that this year the Sheriff bring in something for Capital.

Mr. Hall explained the Sheriff's objectives for this request. Commissioner Wheeler felt it was not good budgeting practice. Other Commissioners voiced their opinion, and Commissioner Davis supported the Sheriff's request.

The Chairman CALLED THE QUESTION and by a 3-2 vote (Commissioners Wheeler and O'Bryan opposed) , the Board approved for the Sheriff's Department to amend its fiscal year 2007-2008 Operating Budget to transfer funds

between categories (i.e., salaries, operating, and capital) as needed to maximize use of the 2007-2008 budgeted funds, as requested in the letter dated March 6, 2008.

9. PUBLIC ITEMS

9.A. PUBLIC HEARINGS

1. THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS' REQUEST FOR SPECIAL EXCEPTION USE APPROVAL TO EXPAND AN EXISTING CHURCH

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

Planning Director Stan Boling recapped the backup memorandum dated March 10, 2008, and provided background description and conditions of MBV's Engineering, Inc.'s Application for special exception use approval on behalf of the Church of Jesus Christ of Latter Day Saints, to expand the existing church located at 3866 12th Street. Director Keating presented staff's recommendation for approval, based on the conditions outlined on pages 68-69 of the backup.

Director Boling thereafter responded to questions from the Board regarding buffer requirements, night traffic complaints, and access to the site by existing residents.

The Chairman opened the Public Hearing.

Franz Shropa, Project Architect, addressed the problems of individuals playing “Nascar” in the parking lot at night, the necessity of putting in a gate, or any other alternative. They wanted to include the gate as a revision to their Plan already in the Building Department. The Board agreed.

There were no speakers and the Chairman closed the Public Hearing.

On MOTION by Commissioner Wheeler, SECONDED by Commissioner Flescher, the Board unanimously approved and found that, in conjunction with the recommended conditions:

1. It is empowered under the provisions of Chapter 971 to review the special exception use applied for;
2. Granting the special exception use approval will not adversely affect the public interest; and
3. The application satisfied the general and specific criteria required for special exception use approval.

The Board also granted special exception use approval for the church expansion with the following conditions:

1. Intruder-deterrent landscaping, such as bougainvillea, saw palmetto, or Spanish bayonet, must be provided along the west 330’ of the project’s north boundary.
2. Prior to site plan release, the applicant shall:
 - a. Obtain a tree removal permit for removal of any trees over 4” dbh;
 - b. Submit cut sheets (or design cross-sections) of all outdoor light fixtures, including wall-mounted lights and parking lot lights. All outdoor lights shall comply with SR 60 Corridor light shielding requirements.

3. Prior to issuance of a certificate of occupancy for the new church building, the applicant shall:
 - a. Construct the required 12th Street sidewalk as depicted on the site plan.
 - b. Install all perimeter buffers and opaque features, including the intruder-resistant landscaping along the west 330' of the project's north boundary.
 - c. Sell 30' of right-of-way to the County for 12th Street as depicted on the site plan.
4. The applicant shall install a gate to prevent nighttime intruders in the parking lot.

**9.A.2 TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA)
PUBLIC HEARING TO APPROVE THE ISSUANCE OF
PROPOSED PALM BEACH COUNTY, FLORIDA, VARIABLE
RATE DEMAND REVENUE BONDS (THE CHILDREN'S
HOME SOCIETY OF FLORIDA PROJECT) IN AN
AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED
\$17,000,000**

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE
OFFICE OF THE CLERK TO THE BOARD

Assistant County Attorney Marian Fell recapped the backup memorandum dated March 11, 2008, and provided background on the matter. She then presented staff's recommendation for the Board to open the TEFRA public hearing to consider and approve the issuance of the Bonds by Palm Beach County and the financing of the project; to approve the Resolution in the form presented; and to approve the Interlocal Agreement between the County and Palm Beach County, and authorize the Chairman to execute same.

The Chairman opened the Public Hearing.

Tricia Jenkins & Sabrina Barnes, Children's Home Society, P.O. Box 3612, Vero Beach, gave a brief background on the Home, talked about the services offered, and explained the purpose of the Bond.

There were no speakers and the Chairman closed the Public Hearing.

On MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-037** approving the execution of an Interlocal Agreement with Palm Beach County, Florida; approving the issuance by Palm Beach County, Florida, of the Palm Beach County, Florida Variable Rate Demand Revenue Bonds (The Children's Home Society of Florida project), Series 2008. In an aggregate principal amount not to exceed \$17,000,000, such Bonds to be issued for the purpose of providing funds to Palm Beach to make a loan or loans to The Children's Home Society of Florida to finance and refinance, among other things, all or a part of the costs of the acquisition, construction and equipping of a certain social service center in Indian River County, Florida; and providing an effective date.

AGREEMENT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

9.B. PUBLIC DISCUSSION ITEMS

1. REQUEST TO SPEAK FROM JOSEPH PALADIN, CHAIRMAN OF GROWTH AWARENESS COMMITTEE, RE: THE WALL AROUND MICHAELS CREEK PROJECT

Joseph Paladin updated the Board on the subject wall since he last approached the Board on the matter. He read into the record a letter he received from Dr. David Cox (a member of the Growth Awareness Committee) stating his objection to the wall and seeking the Board's help to remedy the problem. Mr. Paladin clarified that the Subdivision on the CR 510 that has a surrounding wall was not his property. He displayed an area map showing the subject wall and surrounding landscaping and wanted to see more done, if possible, because a 7-foot berm would not create the look or feel desired.

Mr. Paladin argued pertinent points in support of his desire to have the wall removed. He also sought the County Attorney's legal opinion on whether there was any legal standing in having the matter addressed.

Attorney Collins shared his opinion of what could be done to resolve the problem. He said when we invoked the pending ordinance, there were certain clear and specific provisions including buffers for arterial roads, articulated walls, and openings in walls that were put in place, and because the subject application was in before the pending ordinance, it was not required to comply with the pending ordinance provisions.

Director Boling responded to questions from the Board regarding height of the buffer, and whether there was any room for interpretation for the application process. Attorney Collins outlined all the necessities to complete an application process.

Chairman Bowden likened this issue to Waterway Village, and made it clear that they all thought walls were not appropriate for our community, nor were they beneficial.

Mr. Paladin continued his arguments outlining the conditions required by the Planning & Zoning, and whether there was a concurrency certificate issued on the application. Attorney Collins again explained why the County could not ask for the wall to be torn down

Mr. Paladin asked if there is anything that could be done to make this acceptable to the people who live there and drive that route (in the vicinity of the wall) rather than get into a legal challenge.

Commissioners and staff continued to discuss appropriate landscaping and buffer requirements.

Mr. Paladin thought they could incorporate landscaping on both sides of the wall so that the wall would not be so distinguishable. He thought if the Board tried harder, they could resolve the problem.

The Board and staff continued to discuss the use and types of canopy trees that could be used for the buffer.

There was no action taken on this item.

9.C. PUBLIC NOTICE ITEMS - NONE

10. COUNTY ADMINISTRATOR'S MATTERS - NONE

11. DEPARTMENTAL MATTERS

A. COMMUNITY DEVELOPMENT

**II.A.1 CONSIDERATION OF ESTABLISHING AN AFFORDABLE HOUSING
ADVISORY COMMITTEE (AHAC)**

Community Development Director Bob Keating explained that this item involves the establishment of an Affordable Housing Committee, which is a State requirement. He reminded the Board how they had decided against this idea in the past, but that the 2000 Legislature mandated that counties establish Affordable Housing Advisory Committees (AHAC) which should consist of eleven (11) members, and specific criteria to be met. Staff recommends establishment of the Committee with the eleven voting members, but with six (6) non-voting members, one from each municipality in the County and one member from the Board of County Commissioners. He noted that the Statute also specified certain responsibilities that the Committee has, like looking at the County's housing regulations, its affordable housing incentives, and other characteristics; submitting a report by December 2008 and every three years thereafter. Staff recommended that this Committee be directed to work with staff to review the evaluation and appraisal report for the housing element of the Comprehensive Plan. Staff also recommended creation of the Committee by approval of the Resolution submitted.

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Vice Chairman Davis, to approve staff's
recommendation, but to include municipalities as voting
members, and County Commission liaisons as non-voting
members.

Commissioners discussed the type of representation required to fill the positions. Commissioner Wheeler pointed out that this was another unfunded State mandate.

Althea McKenzie, 1220 4th Terrace, reviewed the mandated requirements of the State for the AHAC and thought there was one key component missing, the recipient that would be eligible for affordable housing, particularly low income or moderate income households. She

asked if the Board could consider a special voting member for affordable housing input, because of the need for someone with particular experience in the specific needs of affordable housing. She felt this would be a proactive approach to community development and an inclusive process.

Bob Johnson, Coral Wind Subdivision, asked what precipitated this delay in coming about years later since this was mandated in 2000. Commissioner Wheeler informed him that this was 2007 Legislation.

Ruth Meyers, Program Administrator for the Coalition of Attainable Homes, 1717 Indian River Boulevard, encouraged the adoption of the State mandate to adopt the Committee. She congratulated staff on moving this through quickly, and said the Coalition would be happy to provide input. She encouraged the Board to give consideration to Ms. McKenzie's recommendation.

Renee Renzi, Vero Beach, asked what would be the specific backgrounds of Committee members. Director Keating informed her that each of the eleven members has to represent a specific background or segment of the population. Attorney Collins outlined all the specific backgrounds required by the State. **Ms. Renzi** inquired if staff had anyone lined-up to represent affordable housing, as requested by Ms. McKenzie.

Spencer Simmons, Simmons Homes, wanted to make sure that by setting up the Committee, we do not add to cost and regulations.

The Chairman CALLED THE QUESTION and by a unanimous vote, approved **Resolution 2008-038** establishing the Indian River County Affordable Housing Advisory Committee and assigning Tasks to the Committee.

The Chairman called a Break at 10:42 a.m., and reconvened the meeting at 10:54 a.m., with Commissioners Davis and Flescher absent.

11.A.2. OCEAN CONCRETE, INC.'S APPEAL OF A DECISION BY THE PLANNING AND ZONING COMMISSION AFFIRMING THE COMMUNITY DEVELOPMENT DIRECTOR'S DENIAL OF A REQUEST FOR A ONE-YEAR EXTENSION OF A SITE PLAN APPLICATION TO CONSTRUCT A CONCRETE BATCH PLANT

(Clerk's Note: (1) Commissioners Davis and Flescher were absent at the resumption of the meeting, and returned at 10:55 a.m. (2) Court Reporter Kathy Duncombe of Atlantic Reporting was present on behalf of Ocean Concrete)

County Attorney William Collins informed the Board that this was a quasi-judicial matter, and requested that the Clerk swear-in all potential speakers. The Deputy Clerk administered the Oath.

Planning Director Stan Boling recapped the backup memorandum dated March 6, 2008, and through a PowerPoint presentation provided background description and conditions on Ocean Concrete, Inc.'s appeal of a decision of the Planning and Zoning Commission (PZC). He reported that PZC at its January 10, 2008 meeting considered and denied (7-0) an appeal by Ocean Concrete, which sought to reverse a decision of the Community Development Director to deny a request for a one-year extension of a major site plan application to construct a concrete batch plant. He reminded the Board of prior actions on this matter, and outlined the section of the Code [S. 914.06(4)(d)] that applies to application extensions.

Director Boling summarized and related staff's responses to the Appellant's contentions:

(1) that staff should have granted the extension request because County staff failed

to conduct a complete review of the site plan application, and issue final comments within the time specified by the Land Development Regulations (LDRs).

Staff contends that it did issue a discrepancy letter within seven (7) working days as required by the LDRs, and that the review followed standard procedures.

(2) that staff's denial of the site plan extension was arbitrary and inconsistent with staff's actions during the site plan review and is not based on applicable LDR provisions.

Staff contends that its actions were neither arbitrary nor capricious.

(3) that staff's denial of the site plan application constitutes a deliberate and bad faith maneuvering to arbitrarily allow the expiration of the site plan application.

Staff contends that it has followed all the review timeframe.

Director Boling then presented staff's recommendation that the Board find that PZC did not fail to follow the appropriate review standards, and to deny the appeal and uphold P&Z's decision. Staff found that Planning and Zoning did not fail in its review and findings. Director Boling thereafter responded to questions from the Board regarding prior extensions granted, requiring compliance with new LDRs.

The Chairman opened the floor to public input.

Charles Wilson, 1936 19th Avenue, representing Ocean Concrete, explained the difference between a concrete and a cement plant, and remarked that this site has agreed that it would not create cement. He disclosed that they have a million dollar pollution/dust control provision on the Plant that creates no dust, pollution, manufacturing operations, and no noise. He presented a four-option scenario of how the Board may look at the issue. He thought that if given the opportunity, they could reach a compromise for the best of all the people.

Jeffrey Smith, Esquire, Smith & Associates, Tallahassee, representing Ocean Concrete, asked the Board for only one thing, "A fair, honest, straightforward hearing and decision that's free of any kind of posturing, legal gamesmanship, and maneuvering." He

submitted to the Board that the process that brought them here is nothing more than “gamesmanship.” He debated staff’s response and agreed that it would be fair if they were being denied on the merits, but felt the decision to deny the site plan extension was riddled with inconsistency, which reasons he gave. He implored the Board to grant the extension request.

Todd Smith, 121 Hinchman Avenue, Sebastian, Engineer for the Ocean Concrete Project, wanted to address comments from Director Boling’s presentation, which he thought was prejudicially brought to the Board to indicate that they let two years go by and had done nothing with the project. He stated the reason for the extension request, and stood by the reasoning that what they submitted met all the County Code requirements.

Director Keating informed the Board that staff’s position is the same as the Planning and Zoning Commission, and believed they made the right decision in denying the application for extension. He felt the decision was not arbitrary, our decision was logical and rational, and was the only correct decision to be made.

MOTION WAS MADE by Commissioner Flescher,
SECONDED by Commissioner O’Bryan, to support
P&Z’s decision, that it did not fail in the review process,
and therefore deny the appeal and uphold the P&Z’s
decision to wholly affirm the Community Development
Director’s actions and decision.

Commissioner O’Bryan discussed the decision by the Board for uses in certain industrial light zoned districts. He believed staff made the correct decision.

Chairman Bowden thought it was clear that the extension of the site plan application was the only decision that we could make legally and logically. She supported staff’s decision.

Commissioner Flescher remarked, based on earlier comments, that this was not about the merits of Ocean Concrete, but is solely on the appeal process, and whether there were any inherent actions within staff, or there was a defect in P&Z's process.

The Chairman CALLED THE QUESTION and by unanimous vote, the Board found that the Planning and Zoning Commission's decision did not fail in regard to any of the four appeal review areas. The Board denied the appeal and upheld the Planning and Zoning Commission's decision to wholly affirm the Community Development Director's determination to deny the request for a one-year extension of the subject site plan application, as recommended in the memorandum dated March 6, 2008.

11.B. EMERGENCY SERVICES - NONE

11.C. GENERAL SERVICES - NONE

11.D. HUMAN RESOURCES

1. *MEDICARE HEALTH INSURANCE PLAN FOR RETIREES AND HEALTH INSURANCE SUBSIDY POLICY*

Human Resources Director Jim Sexton brought two issues to the Board: (1) offering a Medicare health insurance plan to retirees, and (2) a potential revision to the health insurance subsidy policy that is currently in place. He asked that the two items be discussed separately, and he began with whether the County should offer Medicare health insurance plans

to its retirees as an option rather than carrying the full insurance benefit. He thereafter invited Gregg Kunemund from Blue Cross to provide more detailed information on the Plan.

Gregg Kunemund, Product Manager of Blue Cross Blue Shield for Medicare Replacement Plans, informed the Board of the proposed Plans and benefits. He explained how the Plans are subsidized by the government to lower premium and give enhanced benefits to the retirees. He also highlighted the benefits, which are PPO plans that give access to in and out of network providers in the State, as well as, Medicare providers in the Country.

Vice Chairman Davis inquired about the criteria to be met by individuals. **Mr. Kunemund** explained the criteria according to the Medicare guidelines, in which retirees must be a part of the group plan and be eligible for Part A.

Administrator Baird provided further details regarding the eligibility of employees and retirees, as well as a subsidy received from the State. He also talked about post-employment benefits and thought we could have a huge financial problem if we do not change our benefits.

Director Sexton explained the options of employees to stay on the plan they currently have or to go on the Medicare Plan. Through a Blue Medicare Cost Comparison chart he explained the costs relative to County employees.

Mr. Kunemund responded to Chairman Bowden's question of whether there was any downside.

Administrator Baird explained to Vice Chairman Davis why he thought we should offer this insurance plan.

Finance Director Diane Bernardo discussed the liability and funding requirements of other counties, and could not say what our numbers/contributions would be because we would

not know until we go through the actuarial valuation.

Commissioner Flescher was concerned about limited participating providers and individuals having to pay more out-of-pocket because of the lack of providers.

Chairman Bowden preferred this matter be brought back for discussion because there were a lot of unanswered questions. She wanted to be sure of what we are buying into. Other Commissioners agreed.

There was CONSENSUS by the Board to bring this matter back to the Board for further discussion.

There was also CONSENSUS to schedule a Workshop for more detailed discussion on the matter.

The Chairman called a break at 12:29 p.m., and reconvened the meeting at 12:43 with all members present.

11.E. HUMAN SERVICES - NONE

11.F. LEISURE SERVICES – NONE

11.G. OFFICE OF MANAGEMENT AND BUDGET

1. FUNDING OF NON-PROFIT AGENCIES, FISCAL YEAR 2008/2009

Budget Director Jason Brown asked the Board for direction regarding the County's funding of non-profit agencies. He said the agencies that the County funds in the General Fund totals about \$2.7 million, and he wanted to get policy direction before sending out funding applications next week. He displayed a spreadsheet outlining "non-profit funding scenarios" for various agencies and recommended that non-profit funding in the General Fund be eliminated. He did not think it would be appropriate to send out the applications if they were not going to fund them next year. Staff also recommended a 25% reduction in the Children's Services funding, and a 15% cut in the quasi non-profits.

Vice Chairman Davis asked if the Wabasso Meals on Wheels that was approved recently would be affected. Administrator Baird said that was a one time thing and it would not affect this year's budget. However, they would be sent a letter that the County could not fund them for the 2008-2009 year. Administrator Baird also listed the other entities that could or could not be eliminated and/or adjusted. He said staff would not send out letters to non-profits to renew their applications, as customary. He therefore asked the Board for approval to send out information of the County's intent, because he did not want to give any false hope.

Director Brown and Administrator Baird responded to questions from the Board regarding savings to the County after elimination of non-profit funding.

Vice Chairman Davis believed the best route would be to cut everyone by 15%. Administrator Baird again outlined his need for Board direction on how to deal with entities, especially with quasi non-profits.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Davis, to cut as described by staff, but at 25% for the quasi non-profits.

Under discussion, Chairman Bowden remarked that this is going to be painful for everyone including us, but we have to start looking at everything.

Lou April, Citrus Springs, spoke in favor of the Children's Services, and felt they were not present to defend themselves against the proposed cuts.

The Board and staff discussed funding and the necessary reduction of the budget, and Commissioner Wheeler felt this was an opportunity for community people and businesses to help out various organizations like the Children's Services.

Spencer Simmons, 118 43rd Avenue, agreed with Commissioner Wheeler that the government needs to pull away and let the people support what they deemed needed support, and not always expect the government to take care of everyone's needs.

Joseph Paladin, a member of the Board of Director of the Children's Substance Abuse Committee, asked if this meant they should expect a 25% cut on what they are expecting to get this coming year.

Administrator Baird could not give any guarantees because staff had not yet gotten its revenue projections.

Mr. Paladin engaged in further discussions with the Board on the matter, and Commissioner Wheeler suggested they might want to look to Tallahassee to get funds.

Bob Johnson, Coral Wind Subdivision, thought 15% was a more realistic approach, and as far as the Humane Society, felt staff needed to prioritize these organizations, because Children's Services is more important and should take precedence over the Humane Society. He recommended that some of the non-profit agencies that come to the County for two separate opportunities could select which source of money they need from the County government and eliminate the other source.

Penny Chandler, Indian River County Chamber of Commerce, said the Chamber carries the Economic Development functions, and promised that they will, for economic development purposes, continue to carry out that function. Further, that with the support and vote of her Board, they would substantially cut what they have asked the County for economic development for the next year.

Commissioner O'Bryan remarked that this is the unintended consequence of what we voted for in these blanket one-size fits-all budget amendments (Amendment 1.)

Commissioner Flescher thought the only collateral gain is that we see what government by referendum could possibly do.

Chairman Bowden said we would not be doing business as usual; this would be a new road we are traveling down in this community, and was sure we would all rise to the occasion.

Vice Chairman Davis thought it would not be proper to send out invitations for grant applications to non-profits knowing we are facing dire straits.

Commissioner Wheeler felt this has the potential to get businessmen and politicians back into reality, because he believed the responsibility falls on the community and individual people to support these organizations more than government. He said it is going to be

painful but we needed to take a hard look at where we are going with our spending.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved budget cut as described by staff - the elimination of funding for General Fund non-profits, a 25% cut for Children's Services and a 25% for the quasi non-profit agencies.

11.H. RECREATION – NONE

11.I. PUBLIC WORKS

1. 16TH STREET PAVING BETWEEN 74TH AVENUE AND 66TH AVENUE – FLEMING RIGHT-OF-WAY

Chris Kafer, County Engineer, said this item was brought up to get a clear direction from the Board regarding the paving of 16th Street between 74th and 66th Avenues, specifically the right-of-way acquisition from the Fleming property. He displayed a location map from which he outlined and discussed the subject property. He recapped the backup memorandum dated March 11, 2008 and provided further background on the matter. He then presented staff's recommendation that an updated appraisal be authorized, and that a final offer be made for the appraised value of the property. He also presented alternative options to acquiring the additional right-of-way, as listed at page 205 of the backup memorandum. He pointed out that Pointe West was required to pay up to 50% of the cost of the project. He thereafter responded to questions from the Board.

Chairman Bowden, for the record, desired to know who was the Attorney for the Flemings. Deputy County Attorney Bill DeBaal believed they are represented by the Tileston Firm out of Orlando.

Lynn Fleming, 6886 16th Street, reported that after she had effected changes to the property and customized her home to her liking, she became aware and received notice that the County needed the right-of-way at the front of her home. She said staff informed her that it was the only feasible option they have and advised her to get an Attorney. Ms. Fleming complained of her inability to afford an attorney, and her non-receipt of notice for today's hearing. She was upset that the County had offered her \$55,000.00 for her "front yard", with a warning for her to take the offer or stand to lose it by eminent domain. She believed eminent domain should only be utilized when no other options are available. She felt it was ludicrous to sell her front yard to facilitate a golf course. She hoped the County would explore the other options that are available, like the granting of a variance. She reasoned that if they take the right-of-way it would not only lower her property value, but would be unsafe for her children and pets.

Ted Robinson, Indian River Shores, questioned why the Flemings were not notified of this meeting. Director Mora explained why it was not staff's intention to exclude Ms. Fleming from today's hearing.

Mr. Robinson thought this was all about what is the reasonable necessity and public purpose of using eminent domain for the almost sole benefit of the real estate development and the construction industry. Administrator Baird explained that the public purpose was to accommodate growth on the roads. Mr. Robinson felt there was no public benefit. He read a letter he wrote to the Commissioners regarding "reasonable public projects," which warns of legal action if the County uses eminent domain to take the Fleming property.

Attorney Collins explained staff's proposed offer. It was his opinion that the way the County is trying to proceed is fiscally prudent and not irresponsible.

Mr. Robinson said the option of guardrails along the Canal could be considered, and Director Mora explained how guardrails could be a problem and not the best solution.

Commissioner O'Bryan discussed cost-share, and wanted staff to come back with more detailed financial analysis pertaining to the irrigation costs. He also wanted staff to look at every possible option where we do not have to take the house. He did not think it was a good option to take someone's house because of a golf course.

Commissioner Wheeler wanted to explore the option of a guardrail and wanted it looked at in the design phase to see if it was a possibility.

Vice Chairman Davis did not think that Ms. Fleming's request was unreasonable. He did not agree with the fees of \$600,000.00 but understood the logic behind it.

Chairman Bowden wanted the matter remanded to staff for further review. She also wanted it on record that Ms. Fleming be notified when this is to be brought back before the Board.

There was CONSENSUS among Board members to have the matter remanded to staff for further review and be brought back before the Board at a later date.

11.J. UTILITIES SERVICES –

1. CONTINUING CONSULTANT SERVICES WORK ORDER No. 6 WITH SCHULKE, BITTLE & STODDARD L.L.C. FOR SURVEY, DESIGN, BIDDING AND CONSTRUCTION SERVICES FOR PUMP STATION No. 2058 ON 37TH STREET BY HEALTHSOUTH – UCP 2784

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 6 with Schulke, Bittle & Stoddard, L.L.C. in the amount of \$12,220.00 for engineering design, construction plans, bid documents, bidding assistance and construction services and authorized the Chairman to execute same, as recommended in the memorandum of February 27, 2008.

WORK ORDER ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

11.J.2. UTILITY CONSTRUCTION STANDARDS 2008 – UCP 2821

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board unanimously approved the adoption of the revised Water and Wastewater Utility Standards - March 2008, as recommended in the memorandum of March 11, 2008.

11.J.3. GRAND HARBOR SPOONBILL MARSH – APPROVAL OF FLORIDA POWER & LIGHT, COMPANY UNDERGROUND FACILITIES INSTALLATION AGREEMENT AND CONTRIBUTION IN AID OF CONSTRUCTION

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Underground Distribution Facilities Installation Agreement with FPL; authorized a Contribution in Aid of Construction in the amount of \$52,345.50 (\$39,525.20 cash and \$12,820.30 in labor); and authorized the Chairman to execute the same, as recommended in the memorandum of February 21, 2008.

AGREEMENT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

12. COUNTY ATTORNEY

A. OCEAN CONCRETE'S APPEAL OF FEBRUARY 22, 2008 DECISION BY THE COUNTY ATTORNEY'S OFFICE DETERMINING OCEAN CONCRETE APPEAL OF COMMUNITY DEVELOPMENT STAFF DENIAL OF SITE PLAN APPROVAL WAS UNTIMELY DUE TO LATE FILING FEE

Jeffrey Smith, Attorney for Ocean Concrete, argued that the appeal was timely filed within Code requirements, and that the \$800.00 appeal fee check was included, but was returned for insufficient funds. He argued the point of whether the County should deny an appeal because of a filing fee discrepancy, and suggested to the Board that the question is, not that there is a legal bar, and they can't go forward, but what is good public policy. He acknowledged that they could be denied on the merits, but should not be barred from being heard.

County Attorney William G. Collins II, thought it was a question of “What is the law” and what our requirements are. He discussed County Code and presented case law in support of his arguments, which included filing fee requirements. He suggested that the Board do not hear the appeal, and presented the options of the Board to decide whether to accept the opposing arguments from Ocean Concrete or the arguments of the County Attorney. He recommended that the Board uphold his decision.

Attorney Smith clarified for the record, the contention regarding filing fees, that the filing fee was tendered. He thought the real issue was notice to the person and a fair opportunity to cure it before the appeal goes forward. He urged the Board to avoid the temptation to avoid dealing with Ocean Concrete.

Commissioner O’Bryan discussed legislative intent and the intent of our ordinance. He thought the Board should be allowed to hear a citizen’s case in a timely and non-frivolous manner, and thought the appeal was timely.

Chairman Bowden saw it differently. She believes in completeness and felt the application should have the required funds at the time of submittal.

The Board continued discussion on whether they were making a policy decision.

Commissioner O’Bryan MOVED for Alternative 1, to accept Ocean Concrete’s arguments that a filing fee is not jurisdictional and remand to the Planning and Zoning Commission for a decision on the Community Development Director’s determination that Ocean Concrete’s site plan is not approvable under County land development regulations. There was no SECOND. Motion DIED.

Attorney Collins responded to questions from the Board regarding his views on setting precedent that for the appeal to be proper it must be accompanied with the required fees, and the same scenario had come up with another applicant (the Source).

Doug Vitunac, Esquire, 756 Beachland Boulevard, wanted to clarify the judge's ruling because he thought there was a misinterpretation of the court's ruling in that case (on Judge Hawley's ruling of his client's case – the Source.)

Attorney Smith wanted the record to reflect that we have just heard from Counsel (Doug Vitunac) for the party that was seeking to preclude the hearing from going forward in the Source. He gave his interpretation of Judge Hawley's ruling in that matter, and reiterated the facts of the matter regarding the filing fees in the Ocean Concrete's issue.

Attorney Collins responded to Commissioner Flescher's query regarding the County having a defensible position in this matter.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Vice Chairman Davis, under discussion, to approve Option 2 -“Uphold the opinion of the County Attorney's Office that the appeal is defective because, including the required filing fee, it was not filed in a timely manner.”

Under Discussion, Vice Chairman Davis thought that by having the “bright line” requirement of the filing fee this was going to be significant in other appeals.

The Board continued to discuss the appeal and whether the payment was in place at the time of application. **Mr. Wilson** said payment did accompany the application.

Commissioner Wheeler remarked that we have to draw the line someplace, and you either meet it or you don't meet it.

Spencer Simmons believed Commissioner Wheeler was correct and felt the lines should be specifically drawn.

Vice Chairman Davis and Commissioner Wheeler supported the Motion but understood Commissioner O'Bryan's concerns.

The Chairman CALLED THE QUESTION and by a 4-1 vote (Commissioner O'Bryan opposed), the Board approved Alternative 2, upholding the opinion of the County Attorney's Office that the appeal is defective because, including the required filing fee, it was not filed in a timely manner, as recommended in the memorandum dated March 12, 2008.

The Chairman called a Break at 2:27 p.m., and reconvened the meeting at 2:37 p.m., with all members present.

12.B. PURCHASE OF LENNIE'S LOUNGE PROPERTY

Assistant Public Works Director Chris Mora, through an overhead slide, pointed out the subject and adjacent properties, including right-of-ways. He said staff has been negotiating the purchase of Lennie's Lounge property for the proposed 43rd Avenue expansion project for many years. He said the intersection improvements would impact almost the entire property, thus the necessity to purchase the entire property. He thereafter presented staff's recommendation to accept the \$930,000.00 offer to purchase the property and approval.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the acceptance of the offer of \$930,000.00 to purchase Lennie's Lounge Property and approval of the conditions on the addendum to the contract, as recommended in the memorandum dated March 11, 2008.

CONTRACT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

12.C. C.N. KIRRIE REQUEST FOR RESOLUTION ACCEPTING IMPLIED DEDICATION OF A 60-FOOT STRIP OF LAND IN SECTION 30 SHOWN ON THE FLEMING GRANT PLAT OF 1888 (RECORDED IN BREVARD COUNTY IN PLAT BOOK 1, PAGE 72) BY S.B. CARTER, NOW LYING AND BEING IN INDIAN RIVER COUNTY

This item was deleted from the Agenda

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved that this item be deleted from the Agenda.

13. COMMISSIONERS ITEMS

- A. COMMISSIONER SANDRA L. BOWDEN, CHAIRMAN -**
NONE

**13.B. COMMISSIONER WESLEY S. DAVIS, VICE
CHAIRMAN - NONE**

13.C. COMMISSIONER JOSEPH E. FLESCHER- NONE

13.D. COMMISSIONER PETER D. O'BRYAN

**1. FLWAC CHALLENGE OF THE SAND LAKES
TRACT**

Commissioner O'Bryan explained that he placed this item on the Agenda to update the Board and for them to take any action if desired, because there is a timeframe involved and they would not be meeting again until after that time-frame has expired. He invited Assistant County Attorney George Glenn to give a summary presentation.

Assistant County Attorney George Glenn recapped the backup memorandum dated March 12, 2007 and informed the Board that the St. John's River Water Management District (District), at its March 11, 2008 meeting, voted to rescind the September 11, 2007 Order convening away the conservation tract known as Sand Lakes. He reminded the Board of the County's prior actions to challenge the District's final order, and explained that with the rescinding of the Order, the County's appeal to Florida Land and Water Adjudicatory Commission (FLWAC) is now moot. He reported that the purpose of bringing this forward was to notify the Board of the formal rescinding of the previous order, and of the new order that conveys the 9.1-acre portion of Sand Lakes.

Attorney Collins asked Attorney Glenn to explain the nature of the flagpole portion shown at the subject location.

Commissioner O'Bryan brought this up for information purposes so the Board would be aware of the time constraint, and felt that the 9.1 acres was worth fighting over. He also felt the bigger picture was that the over 1,254 remaining acres would be held in conservation.

Attorney Glenn responded to further questions from the Board regarding uses of District owned property, what interest the County would retain in the subject property, and whether there would be a management plan, which the District would be responsible for implementing.

No Board action required or taken.

13.E. COMMISSIONER GARY C. WHEELER - NONE

14. SPECIAL DISTRICTS AND BOARDS

A. EMERGENCY SERVICES DISTRICT - NONE

B. SOLID WASTE DISPOSAL DISTRICT

The Chairman announced that immediately upon adjournment of the Board of County Commissioners Meeting, the Board would reconvene as the Board of Commissioners of the Solid Waste Disposal District. Those Minutes are being prepared separately and are appended to this document.

1. APPROVAL OF MINUTES MEETING OF JANUARY 22, 2008

2. APPROVAL OF MINUTES MEETING OF FEBRUARY 5, 2008

3. WORK ORDER NO. 9 – CAMP DRESSER & MCKEE, INC. FOR ENGINEERING SERVICES FOR DESIGN, PERMITTING, AND CONSTRUCTION OF THE NEW OSLO CUSTOMER CONVENIENCE CENTER

C. ENVIRONMENTAL CONTROL BOARD - NONE

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES.

15. ADJOURNMENT

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 2:49 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Sandra L. Bowden, Chairman

Minutes Approved: _____

BCC/AA/2008 Minutes